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SEP 04 2007

OFFICE OF PETITIONS

In re Application of

Delaney et al.

Application No. 10/645,153

Filed: August 21, 2003

Attorney Docket Number: 83336.1535

Title of Invention: Fixed Pool Bonus Method
and Apparatus

DECISION ON PETITION

UNDER 37 CFR 1.183 AND 1.48

This is in response to the petitions filed under 37 CFR §§1.48 and 1.183 filed on August 8, 2007.

The petition filed under 37 CFR 1.48 is **DISMISSED**.

The petition filed under 37 CFR 1.183 is **DISMISSED**.

Applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR. §1.136(a).

The above-identified application was filed on August 21, 2003, without an executed oath or declaration. A declaration was filed on January 20, 2004 naming inventors Michael Delaney, Loren Nelson and Warren White as the co-inventors. Petitioner now seeks to amend the inventorship for the above-identified application to add inventor

Robert Luciano, Jr.

Petition Under 37 CFR 1.48

A grantable petition under 37 CFR 1.48 (a) requires: (1) a request to correct the inventorship that sets forth the desired inventorship change; (2) a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (3) an oath or declaration by the actual inventor or inventors as required by §1.63 or as permitted by §§ 1.42, 1.43 or §1.47; (4) the processing fee set forth in §1.17(i); and (5) if an assignment has been executed by any of the original named inventors, the written consent of the assignee.

As to item (2), petitioner has failed to provide a statement from inventor Luciano. In those situations where an inventor to be added refuses to submit a statement supporting the addition or such party cannot be reached, waiver under 37 CFR 1.183 of the requirement for a statement from that party would be appropriate upon a showing of such refusal or inability to reach the inventor.

As to item (3), the declaration submitted is not in compliance with 37 CFR 1.63 . Rule 47 applicant failed to provide the citizenship of all of the inventors pursuant to 37 CFR 1.63 (a)(3). The citizenship has not been provided for inventors Nelson and Luciano, The declaration also has failed to provide the mailing address of Robert Luciano, Jr. On renewed petition, a newly executed declaration is required.

Petition Under 37 CFR 1.183

When an inventor who executed the original declaration is refusing or cannot be found to execute a required supplemental declaration, the requirement for that inventor to sign the supplemental declaration may be suspended or waived in accordance with 37 CFR 1.183. All available joint inventor(s) must sign the supplemental declaration on behalf of themselves, if appropriate, and on behalf of the nonsigning inventor. See MPEP §409.03(a).

Petitioner has provided a statement that inventor Luciano has suffered from complications due to a stroke. 37 CFR 1.47 is available to meet the requirement for an oath or declaration under 37 CFR 1.63 as for example where A, B, and C were originally named as inventors and D who refuses to cooperate is to be later added as an inventor. The oath or declaration under 37 CFR 1.63 of inventor D may be supplied pursuant to 37 CFR 1.47(a), but note that the required 37 CFR 1.48(a)(2) statement

must still be supplied by inventor D (an unlikely event in view of the inability to obtain the executed oath or declaration under 37 CFR 1.63), or waiver thereof petitioned under 37 CFR 1.183. Petitioner has failed to provide evidence that the inventor has either refused to execute the application papers or that diligent effort has been used in attempt to locate the inventor. However petitioner should further note, the fact that an inventor is hospitalized and/or is not conscious is not an acceptable reason for filing under 37 CFR 1.47. 37 CFR 1.43 may be available under these circumstances. See MPEP § 409.02. Such a petition under 37 CFR 1.47 will be dismissed as inappropriate.

Suspension of the rules under 37 CFR 1.183 may be granted in an "extraordinary situation, when justice requires." The facts presented on the record do not adequately establish an extraordinary situation. Petitioner has not sufficiently established any special circumstances of equities that would require suspension of the rules in the interests of justice.

As such, the petition under 37 CFR 1.183 is **dismissed**.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition
Commissioner for Patents
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Alexandria, VA 22313-1450

By facsimile:

(571) 273-8300

By delivery service:

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Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3215.

A handwritten signature in black ink, appearing to read "Charlema R. Grant". The signature is fluid and cursive, with the first name "Charlema" being more prominent and the last name "Grant" following in a similar style.

Charlema R. Grant

Petitions Attorney

Office of Petitions